

NOTICE

CORPORATION LICENSE TAX RETURNS – HOW TO CALCULATE TAX LIABILITY UNDER THE PROVISIONS OF HOUSE BILL 390

On April 15, 2004, Governor Fletcher announced that corporations subject to corporation license tax may utilize the provisions of HB 390 as enacted by the 2003 General Assembly to calculate their corporation license tax liability for returns due, without regard to extension on or after April 15, 2004, but before April 15, 2005. The provisions of House Bill 390 temporarily restore most of the corporation license tax benefits ruled unconstitutional in the *Illinois Tool Works* (ITW) case.

This action is being taken in recognition of the extraordinary legal uncertainty concerning the legal effect of the provisions of House Bill 390. Former Governor Patton vetoed these provisions and the Attorney General has issued an official opinion (OAG 03-003) concluding that this veto was invalid. This partial veto is now the subject of litigation pending before the Franklin Circuit Court styled Citizens National Corporation v. Rudolph, 03-CI-00917.

If the veto is upheld by the Court in a final and unappealable decision, and if no legislation to the contrary is enacted in the interim, affected corporate taxpayers will be expected to pay the full amount of corporation license tax that would have been due had the corporation license tax provisions of House Bill 390 not been enacted. However, corporations will not be required to remit penalties or interest on these amounts.

A text of the House Bill 390 provisions may be viewed at the Legislative Research Commission's web page. Please refer to [House Bill 390 SCS](#). Sections fifteen and eighteen of the bill relate to the license tax calculation.

House Bill 390 allows a corporation that holds directly or indirectly stock or securities in other corporations equal to or greater than fifty percent (50%) of its total assets the following two filing options:

1. The corporation and its subsidiaries may file a consolidated license tax return including the parent corporation and all subsidiaries in which the parent owns 50% or more of the outstanding stock. The consolidated capital figure must be increased by an amount equal to ten percent (10%) of the difference between the total capital employed as apportioned to Kentucky if the parent corporation and each taxable subsidiary filed a

separate license tax return, and the total capital apportioned to Kentucky computed on a consolidated basis.

2. The corporation may file a separate license tax return and deduct from its capital, determined in accordance with KRS 136.070(2), the book value of its investment in the stock and securities of any corporation in which it owns more than 50% of the outstanding stock. The capital figure shall be increased by an amount equal to 10% of the difference between total capital apportioned to Kentucky without the deduction, and the total capital apportioned to Kentucky computed with the deduction.

The provisions of this notice do not apply to bank holding companies. Bank holding companies are governed by the provisions of House Bill 292, which was enacted by the 2004 General Assembly. A separate notice will explain how bank holding companies should file under the provisions of House Bill 292.

If you are a corporation that qualifies for the benefits provided in House Bill 390, and you have already filed a corporation license tax return with a payment based on the ITW decision for the calendar year ended December 31, 2003, you may file an amended return. Any amended return requesting a refund will be reviewed as soon as possible.

If you are a corporation that qualifies for the benefits provided in House Bill 390, and you have already filed an extension for the calendar year ended December 31, 2003 return with a payment based on the ITW decision, a refund may be claimed for the resultant overpayment when the return is filed.

A revised 2003 corporation license tax form 720 will not be issued as a result of this notice. Corporations that qualify to file under the provisions of House Bill 390 shall:

1. Mark the words: "see attachment" above line 10 in Part III of 2003 form 720.
2. Attach a schedule showing the computation of the 50% investment ratio.
3. Attach a schedule that reflects the calculation of capital employed subject to tax under the provisions of HB 390, including the 10% increase in capital subject to tax. Corporations filing under the consolidated option shall include a columnar schedule that reflects the capital calculation for all corporations included in the consolidated return. Corporations taking the deduction option shall include a schedule showing the computation of the deduction listing the name of each corporation included in the deduction amount, percentage of stock owned and the amount of deduction taken.
4. Insert the calculated capital employed subject to tax on line 10 of Part III of 2003 form 720 and complete any applicable succeeding line

An interest in a limited liability company (LLC) or any other non-corporate entity does not constitute stock or security in a corporation for the purposes of determining if a corporation qualifies for the benefits under House Bill 390. Also, if a corporation meets the qualifications for the deduction option, exclusive of its investment in any non-corporate entity, the book value of an interest in a non-corporate entity shall not be included in the deduction.

If you have any questions regarding this notice, please contact the Department of Revenue at 502-564-8139.